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Old Liens May Still Haunt in Zombie Foreclosures

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Bad news for buyers of foreclosed properties: A Broward Circuit judge just ruled that liens remain enforceable, even though they're recorded after a final judgment.

And the lien holder doesn't have to intervene in the foreclosure case to stake that claim.

In a case that pitted real estate investor James Ober against Lauderdale-By-The-Sea, Judge Thomas Lynch sided with the

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Eric Hockman of Weiss Serota and Lauderdale-By-The-Sea town attorney Susan Trevarthen succeeded in enforcing \$328,000 in code enforcement liens.

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town, holding Ober responsible for more than \$328,000 in code enforcement liens incurred years before he purchased a long-foreclosed house.

Liens "recorded between final judgment of foreclosure and judicial sale are valid and enforceable," Lynch wrote in an order dated Oct. 23.

The house at 3270 Spanish River Drive had become a zombie foreclosure—abandoned by residents, unattended and in disrepair—by the time Ober purchased it in September 2013. It last belonged to Bank of America, who foreclosed on it about six years earlier. The bank then sold Ober the property for \$200,000, according to public records.

But years before that deal, the town had imposed hundreds of thousands of dollars' worth of liens against the property for code violations like lack of sewer connection, overgrown grass, no trash service and erecting a fence without a permit.

"Our liens are there," said Weiss Serota Helfman Cole Bierman & Popok senior associate Eric Hockman, who teamed with town attorney Susan Trevarthen for *James Ober v. Town of Lauderdale-By-The-Sea*. "We're on his title, and we have to be satisfied."

But Ober's attorney disagreed. Eric Jacobs argued that the town failed to intervene during the foreclosure case, and the 10 citations issued after the final judgment in 2008 were unenforceable.

"The city argued that it couldn't have intervened in the case and that's why it didn't even bother to try. This is a classic case of governmental overreach," said Jacobs, partner at Beloff Parker Jacob. "Mr. Ober is sensitive to the needs of cash-strapped cities, but it elected not to pick a fight with Bank of America and preferred instead to pick on him. The *lis pendens* statute is there to protect a foreclosing party from people—or cities in this case—jumping in at the end and



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Judge Thomas Lynch ruled an investor was responsible for more than \$328,000 in code enforcement liens incurred years before he purchased a long-foreclosed house.

trying to gain priority."

FAILED MITIGATION

The town's attorneys say Ober knew about the liens when he purchased the property and therefore had constructive notice about the debt.

The buyer applied to the town to reduce the fines before he closed on the property and succeeded in getting a large discount.

Officials say the town created a policy to allow the reduction and slash the debt by 75 percent.

But Ober rejected the mitigation offer and filed suit.

"It's an investment property, and he was trying to get it cheap," Trevarthen said. "He drew a line in the sand and the commission was not willing to accommodate it. Now he is obligated by all of it."

The town's offer has since expired, and the ruling in Broward Circuit Court now holds Ober responsible for \$328,675 in fines, nearly \$16,418 in interest through Oct. 20, attorneys' fees, court costs, plus annual interest of 4.75 percent on the total award.

Ober plans to appeal. "Mr. Ober is one of the good guys," Jacobs said. "He is a small-time real estate investor that buys houses, fixes them up and then sells them. This house was supposed to be the last house before he retires, but the city is now threatening to wipe him out financially."

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